

This letter discusses application of the Electricity Excise Tax to municipal corporations owning and operating a local transportation system for public use. See, 35 ILCS 640/2-4. (This is a GIL.)

August 8, 2000

Dear Xxxxx:

This letter is in response to your letter received June 12, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated and made inquiry as follows:

On behalf of COMPANY, I am requesting rulings from the Illinois Department of Revenue that COMPANY, as a municipal corporation owning and operating a local public transportation system, is exempt from certain taxes. This request for a ruling is prompted by the most recent certificate of tax exemption issued to COMPANY on January 20, 2000 by the Illinois Department of Revenue, Office of Local Government Services, which stated that COMPANY is exempt from certain sales and use taxes, but is not exempt from certain other taxes (see copy attached). It is my legal opinion that the statements contained in this certificate as to the taxes which are applicable to COMPANY are in error and should be corrected. Further, COMPANY also seeks a ruling and certificate of tax exemption regarding the applicability of the Motor Fuel Tax Law. This law was not addressed in the certificate issued on January 20, 2000.

#### Background

COMPANY is an operating division of the Regional Transportation Authority ('RTA'), established pursuant to the Illinois Regional Transportation Authority Act.<sup>1</sup> COMPANY is a municipal corporation and unit of local government as set forth in the following provisions of the RTA Act:

*Section 1.04. Establishment of Authority. A regional transportation authority shall be established upon a favorable vote at the referendum held as provided in Section 1.05 of this Act. Upon its establishment the Authority shall be a **unit of local government, body politic, political subdivision and municipal corporation**<sup>2</sup>.*

*Section 3A.01. Suburban bus division. There is established within the Authority the Suburban Bus Division as the operating division responsible*

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<sup>1</sup> 70 ILCS 3615/1.01 et. seq.

<sup>2</sup> 70 ILCS 3615/1.04, *emphasis added*.

*for providing public transportation by bus and as may be provided in this Act.*<sup>3</sup>

COMPANY provides public transportation by bus and other means in the five collar counties of COUNTIES and in the suburban areas of COUNTY, exclusive of service provided by the BUSINESS. COMPANY owns a fleet of approximately 650 large 'fixed route' buses, 400 smaller 'paratransit' vehicles for public transportation of the disabled, 400 vanpool vans and 100 supervisor cars. COMPANY operates its public transportation services from ten garages which it owns in the following municipalities: CITIES. COMPANY also owns and operates various public transportation facilities, such as park-and-ride commuter parking lots and transportation centers in CITIES.

*Exemption under the Electricity Excise Tax Law*

In my opinion, COMPANY is clearly exempt from the electricity excise tax, because it is a municipal corporation which owns and operates a local public transportation system. Section 2-4 of this statute excludes such entities as follows:

*...a tax is imposed on the privilege of using in this State electricity purchased for use or consumption and not for resale, **other than by municipal corporations owning and operating a local transportation system for public service....***<sup>4</sup>

COMPANY qualifies for this exemption. Please advise whether you agree and if so, please provide your response in a letter of revenue ruling, along with a revised certificate of exemption which clearly states that COMPANY is exempt from the Electricity Excise Tax Law.

*Exemption from the Invested Capital/Electricity Distribution Tax*

As a unit of local government, COMPANY is exempt from the provisions of the Public Utilities Revenue Act which impose a tax on invested capital and on distribution of electricity. Section 2a.1 of the Act sets forth the exemption for governmental entities as follows:

*(...other than...a unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970).*<sup>5</sup>

Section 1 of Article 7 of the Illinois Constitution states:

*'Units of local government' means counties, municipalities, townships, special districts, and units designated as units of local government by law,*

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<sup>3</sup> 70 ILCS 3615/3A.01. In 1985, COMPANY assumed its operating name as COMPANY and filed a trademark for its use, although its legal name remains the Suburban Bus Division of the Regional Transportation Authority.

<sup>4</sup> 35 ILCS 640/2-4, *emphasis added*.

<sup>5</sup> 35 ILCS 620/2a1.

*which exercise limited governmental powers or powers in respect to limited governmental subjects but does not include school districts.*

All local governments in Illinois are exempt from the invested capital/electricity distribution tax. As a unit of local government, COMPANY is exempt from this tax. Please provide your opinion on the applicability of the electricity distribution/invested capital tax and please also have the certificate of exemption issued to COMPANY corrected.

*Exemption under the Motor Fuel Tax Law*

COMPANY also is exempt from the motor fuel tax law, because it is a municipal corporation which owns and operates a local public transportation system. Section 6 of this statute excludes such entities as follows:

*A distributor [of any motor fuel including gasoline] may make tax-free sales of motor fuel, with respect to which he is otherwise required to collect the tax, when the motor fuel is delivered from other facilities only as specified in the following items 1 through 8:*

*...4. When the sale is made to a municipal corporation owning and operating a local transportation system for public service in this State when an official certificate of exemption is obtained in lieu of the tax<sup>6</sup>*

The Motor Fuel Tax Law provides a similar exemption for sales of diesel fuel ('special fuel') to a municipal corporation owning and operating a local transportation system for public service, as follows in Section 6a:

*A supplier may make tax-free sales of special fuel, with respect to which he is otherwise required to collect the tax when the special fuel is delivered from other facilities only as specified in the following items 1 through 7:*

*...2. When the sale is made to a municipal corporation owning and operating a local transportation system for public service in this State when an official certificate of exemption is obtained in lieu of the tax.<sup>7</sup>*

Please provide your legal opinion as to COMPANY's exemption from the Motor Fuel Tax Law for the purchase of gasoline and special fuels. In addition, as I said to you on the telephone, some of our suppliers have been unaware of their ability to make sales of motor fuel to COMPANY on a tax-free basis and have not been cooperative in removing the tax charge. It would be very helpful to COMPANY to have an official certificate issued by the Illinois Department of Revenue which clearly stated COMPANY's exemption from the Motor Fuel Tax Law. If there is some other method of documenting

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<sup>6</sup> 35 ILCS 505/6.

<sup>7</sup> 35 ILCS 505/6a.

the exemption, I would appreciate your specific instructions on how to complete such documentation. This will help us to address our suppliers' concerns.

Thank you for your assistance. If you have any questions or require additional documentation, please contact me at #####.

Section 2-4 of the Electricity Excise Tax Law (35 ILCS 640/2-4) provides that the Electricity Excise Tax is imposed "on the privilege of using in this State electricity purchased for use or consumption and not for resale, *other than by municipal corporations owning and operating a local transportation system for public use ....*" Section 1.04 of the Regional Transportation Authority Act ("the RTA Act") establishes the Regional Transportation Authority ("Authority") and states that it "shall be a unit of local government, body politic, political subdivision and municipal corporation." Section 3A.01 of the RTA Act specifically establishes the Suburban Bus Division as an operating division in the Authority. See, 70 ILCS 3615/3A.01. This being the case, and based upon the information provided indicating that the Suburban Bus Division (otherwise known by its operating name, COMPANY) both owns and operates a local transportation system for public use, we believe that COMPANY is a municipal corporation which owns and operates a local transportation system for public use, and is therefore exempt from the Electricity Excise Tax under Section 2-4 (a). In addition, it should be noted that Section 4.08 of the RTA Act exempts the Authority " ...from all State and unit of local government taxes and registration and license fees ..." See, 70 ILCS 3615/4.08. This being the case, we believe that Section 4.08 of the RTA Act affords yet another basis for COMPANY's exemption from the Electricity Excise Tax.

Section 2a.1 of the Public Utilities Revenue Act ("PURA") imposes a tax on invested capital and on the distribution of electricity. The tax is imposed upon "every taxpayer (other than an electric cooperative, a school district or unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970)" and is based upon the number of kilowatt-hours distributed by the taxpayer. Section 1 of the PURA states that

"Taxpayer," for purposes of the tax on the distribution of electricity imposed by this Act means an electric cooperative, an electric utility, or an alternative retail electric supplier (other than a person that is an alternative retail electric supplier solely pursuant to subsection (e) of Section 16-115 of the Public Utilities Act), as those terms are defined in the Public utilities Act, engaged in the business of distributing electricity in this State for use or consumption and not for resale." See, 35 ILCS 620/1.

Based upon these statutory provisions, we find no authority to exempt COMPANY from the Electricity Distribution Tax. The Electricity Distribution Tax is imposed upon persons that supply electricity to end users. While the cost of this tax may be passed onto end users of electricity, the legal incidence of the tax falls solely upon persons that are engaged in the business of supplying electricity. The exemptions provided for in Section 2a.1 refer only to electric cooperatives, school districts or units of local government that act as distributing suppliers of electricity. The provisions of Section 2a.1 do not, as you assert, provide an exemption for end users of electricity who maintain status as a unit of local government. In short, the manner in which the Electricity Distribution Tax is structured imposes no tax upon COMPANY from which it could be exempted. Neither does it provide an exemption for distributing suppliers making sales to COMPANY.

Section 2 of the Motor Fuel Tax Law ("Law") imposes a tax upon the "privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State." See, 35 ILCS 505/2. This tax, while imposed upon users of motor fuel, is generally collected and remitted to the Department by distributors and suppliers registered under the Law. Sections 5 and 5a of the Motor Fuel Tax Law, respectively, provide exemptions from the Motor Fuel Tax for sales made by distributors and suppliers to a municipal corporation owning and operating a local transportation system for public service in Illinois. See, 35 ILCS 505/5 and 505/5a. To document this exemption, the statute directs the distributor or supplier to obtain "the name and address of such purchaser, and the amount sold, as evidenced by official forms of exemption certificates properly executed and furnished by such purchaser. See, 35 ILCS 505/5 and 505/5a. The Department's regulations at 86 Ill. Adm. Code 500.280 explain these exemptions and provide the format of the exemption certificate that must be provided in order to document the exemption.

COMPANY is specifically recognized in Section 3A.01 of the RTA Act as an operating division of the Regional Transportation Authority. See, 70 ILCS 3615/3A.01. As indicated above, Section 1.04 of the RTA Act states that the Authority is "a unit of local government ... and municipal corporation." This being the case, and based upon information provided stating that COMPANY both owns and operates a local transportation system for public use, we believe it to be exempt from the Motor Fuel Tax.

We note that your letter requests that the Department issue a revised Certificate of Exemption stating that COMPANY is exempt from the taxes discussed in this letter. The Department is unable to comply with this request, even if COMPANY were exempt from all the taxes discussed herein. Issuance of the exemption number (the "E" number) by the Department serves to document an exemption only from sales and use taxes (the Retailers' Occupation Tax, Service Occupation Tax, Service Use Tax and the Use Tax). Use of an "E" number is required to prove exemption from the sales and use taxes. See, Section 2-25 (11) of the Retailers' Occupation Tax Act, 35 ILCS 120/2-25 (11). Use of the "E" number to document exemption from excise taxes is not provided for in the tax laws. Rather, an exempt purchaser must document each exemption as provided by the specific excise tax act. In the case of the Motor Fuel Tax Law, specific documentation is required for each exemption. No specific procedure is established under the Electricity Excise Tax Act to document an exemption of the type discussed in this letter. However, a purchaser could provide a certification which includes the seller's name and address, the purchaser's name and address and a citation to the statutory basis for exemption.

I hope that this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110 (b).

Very truly yours,

Jerilynn T. Gorden  
Senior Counsel, Sales & Excise Taxes